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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 BBC GROUP NV LLC, a Nevada Limited
Liability Company,

10 Plaintiff,
Counterclaim Defendant,

11 v.

12 ISLAND LIFE RESTAURANT GROUP
13 LLC, *et al.*,

14 Defendants,
Counterclaim Plaintiffs.
15

Case No. C18-01011 RSM

ORDER GRANTING DEFENDANTS'
REQUEST TO DISPENSE WITH
SECURITY UNDER RULE 65(C)

16 This matter comes before the Court on parties' supplemental briefing pursuant to this
17 Court's Order dated March 28, 2019. Dkt. #35. The Court granted in part Defendants' Motion
18 for Preliminary Injunction and directed parties to meet and confer and then file supplemental
19 briefing as to the necessity of security under Rule 65(c). *Id.* at 9–10.

20 Pursuant to Rule 65, a court may issue a preliminary injunction “only if the movant gives
21 security in an amount that the court considers proper to pay the costs and damages sustained by
22 any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). Rule

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65(c) affords district courts discretion to determine the amount of security required, if any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). The district court may therefore “dispense with the filing of a bond when it concludes that there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Id.* (internal quotations omitted).

Plaintiff BBC Group NV LLC (“BBC”) believes a bond of \$400,000 is appropriate to cover damages for lost revenue from enjoining BBC’s expansion into Western Washington. Dkt. #39. BBC claims that it planned to expand into Seattle starting in August or September 2019 with the opening of four new locations. *Id.*, Ex. 1, ¶¶ 6-7. BBC argues that the injunction will delay openings for these four Seattle restaurants by at least six months, resulting in “lost profits and lost market share that normally would have been gained in the first and second quarters of 2020.” *Id.* at 3. BBC calculated its requested security of \$400,000 based on \$20,000 in lost profits per month for each of the four locations, totaling \$80,000 per month over the course of the injunction. *Id.* at 3–4.

Defendants Island Life Restaurant Group, LLC and co-owners Alex Prindle and Brian O’Connor (collectively, “Island Life”) request that the Court dispense with security. Dkt. #38. Island Life argues that BBC has failed to provide evidence that it would suffer harm from a preliminary injunction against its expansion into Western Washington. *Id.* at 5–6. According to Defendants, BBC could avoid losing money simply by opening stores in other states. *Id.* at 6.

At this time, the Court cannot find that BBC would suffer potential damage arising from the operation of the injunction. The testimony of BBC’s Chief Financial Officer claims that BBC planned to expand into Seattle starting in August or September 2019 with the opening of four new locations. Dkt. #39, Ex. 1, ¶¶ 6-7. However, BBC clarifies that August 2019 would have marked

1 the beginning of its *planning* for the expansion into Seattle, with the first store opening within
2 four or five months from the beginning of planning, and the remaining three locations opening
3 within eight or nine months. *Id.*, ¶¶ 2-3. BBC thus calculated its potential damages based on lost
4 profits for restaurants that were not yet in the planning stages of opening. Besides indicating its
5 general strategy “to acquire space in the Seattle Tacoma airport” for the first location, *id.*, ¶ 7,
6 BBC has failed to provide sufficient concrete details of its plans for future Seattle expansion that
7 would make it reasonable for this Court to require a \$400,000 security for lost profits.

8 Having reviewed the supplemental briefing and exhibits attached thereto, the Court hereby
9 finds and ORDERS that no security pursuant to Federal Rule of Civil Procedure 65(c) is required
10 of Defendants.

11 DATED this 6th day of June 2019.

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13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE
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